






INDIANA
WORKFORCE
DEVELOPMENT
AND ITS **WorkOne** CENTERS

TO: Indiana's Workforce Investment System

FROM: Teresa L. Voors 
Commissioner, Indiana Department of Workforce Development

THROUGH: Mary Johnson, Deputy Commissioner of Unemployment 
Dustin Stohler, General Counsel 

DATE: June 30, 2009

SUBJECT: DWD Policy 2008-43
Evidentiary Standard for Use of Drug and Alcohol Test Results in Unemployment Insurance Benefit Claim Disputes

Purpose

To provide the standard of acceptable and sufficient evidence in unemployment insurance benefit claim disputes related to discharge from employment for drug and/or alcohol test failure.

Rescission

None

References

Indiana Code §§ 22-4-15-1(d); 22-4-15-6.1; and DWD Policy 2008-41

Contents

Applicability

The Indiana Department of Workforce Development (IDWD) establishes this policy in the interest of providing a fair and consistent standard for accepting or rejecting employee drug test evidence in unemployment insurance (UI) benefit claim disputes. This policy applies to initial determinations of eligibility as well as any subsequent appeals of those determinations to DWD's UI Appeals Division or the UI Review Board.

Background

A claimant must, among other requirements, be unemployed through no fault of the claimant's own to be eligible for UI benefits. If a claimant is discharged by the claimant's most recent employer for just cause or gross misconduct, that claimant is ineligible for UI Benefits. The term "just cause" is defined in IC § 22-4-15-1(d) and in case law. The term "gross misconduct" is defined in statute at IC § 22-4-15-6.1 and explained in DWD Policy 2008-41.

This policy relates to UI benefit claim disputes involving discharge for drug and/or alcohol test failure, which may, but do not necessarily, arise from violation of an employer rule. With respect to rule violations, the evidence must show: 1) the claimant knowingly violated; 2) a reasonable employer rule; and 3) the employer uniformly enforces that rule.¹ With respect to non-rule discharges for drug and/or alcohol test failure, a claimant is ineligible for UI benefits if: 1) the claimant reported to work under the influence of drugs or alcohol; 2) the claimant consumed drugs or alcohol on the employer's premises during working hours; or 3) the claimant's conduct endangered safety of the claimant or coworkers; or 4) the claimant breached a duty reasonably owed an employer by an employee.²

In order to meet the burden of proving that a claimant knowingly violated a rule, reported to work under the influence of drugs or alcohol, consumed drugs and/or alcohol on the employer's premises during working hours, endangered the safety of the claimant's self or coworkers, or breached a duty reasonably owed an employer by an employee, an employer may choose to submit to DWD results of a drug and/or alcohol test. This policy explains the circumstances under which DWD will accept the results of such tests.

Sufficient and Acceptable Drug Test Evidence

DWD will find that the employer has provided sufficient evidence that the claimant knowingly violated a rule related to use of drugs and/or alcohol, reported to work under the influence of drugs or alcohol, or consumed drugs or alcohol on the employer's premises during working hours, if the employer provides evidence sufficient to establish the following:

- (1) A copy of an acceptable drug test;
- (2) An admission by the claimant that the claimant's conduct violated a policy or rule of the employer;
- (3) An admission by the claimant relating to claimant's conduct showing sufficient reason for a just cause discharge under IC §22-4-15-1(d); or
- (4) Any credible evidence that the claimant consumed alcohol, illegal drugs, legal drugs obtained illegally, or any substance prohibited by a policy or rule of the employer.

DWD will find the results of a drug and/or alcohol test to be acceptable for purposes of determining the claimant's eligibility for UI benefits, if the employer provides evidence sufficient to establish the following:

- (1) The test result satisfies the standard for the specific test administered;
- (2) The test was performed using an acceptable sample, which is understood to include:
 - (a) Urine;
 - (b) Blood;
 - (c) Hair;
 - (d) Saliva; or
 - (e) Any other method set forth in the employer's documented alcohol and/or drug policy or rule;

¹ IC § 22-4-15-1(d). Uniform enforcement does not require 100% adherence, but a showing of more likely than not.

² Id.

(3) The drug test was processed by an independent and professional drug testing laboratory or facility maintained and operated for the purpose of providing independent drug and/or alcohol tests;

(4) The claimant gave written consent to be tested for drugs and/or alcohol through the employee handbook or a consent executed prior to the test for the test being presented as evidence; and

(5) If the discharge was related to the claimant reporting to work under the influence of drugs or alcohol or consumed drugs and/or alcohol on the employer's premises during working hours, that the claimant reported to work and/or was on duty during the time for which the drug/alcohol test was positive.

Any of the following reasons for requiring drug and/or alcohol tests of an employee by an employer are acceptable for purposes of determining whether the employer's policy or rule related to alcohol and/or drug use is reasonable:

- (1) Random drug testing as set forth in a known employer rule or policy;
- (2) Accident;
- (3) Evidence of impairment or suspected impairment;
- (4) Any reason set forth in employer policy or rule; or
- (5) Any statutorily required testing.

Successful Rebuttal of Acceptable Drug Test Evidence

After an employer provides acceptable and sufficient evidence of a claimant's drug and/or alcohol test failure, if the claimant contends that the positive result was a false positive caused by medication prescribed by a physician to the claimant, the claimant may successfully rebut the employer's otherwise sufficient evidence by:

- (1) Identifying the medication by name;
- (2) Providing a copy of the prescription or note from the prescribing physician indicating the identity of the medication and the dates for which it was prescribed; and
- (3) Providing evidence sufficient to establish that the prescribed medication was more likely than not to have caused the false positive test result.

Use of Acceptable Drug Test Evidence

Unless the employer's sufficient evidence of drug and/or alcohol test failure is successfully rebutted by the claimant, it is sufficient to overcome the claimant's denial of drug and/or alcohol use. Additionally, if the claimant admits to drug and/or alcohol use, the employer need not provide any evidence related to the claimant's drug and/or alcohol test results.

Off-duty drug and/or alcohol use, where prohibited by a reasonable policy of an employer, will be considered by DWD to be just cause for discharge. DWD will find policies prohibiting off-duty drug and/or alcohol use policies to be reasonable if the claimant received notice of the policy from the employer and the employer uniformly enforces the policy. Absent such policy, off-duty drug and/or alcohol use will not be considered by DWD to be just cause for discharge.

Consumption of drugs and/or alcohol on the job or work site does not require proof of drug and/or alcohol test failure. Eyewitness testimony is sufficient verification of the claimant's consumption of alcohol and/or drug use on the job or work site.

Review Date

July 1, 2011

Ownership

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Effective Date

July 1, 2009

Action

Indiana's workforce investment system will follow the guidance contained in this policy.

Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines.